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JANINA M. ELDER, TRUSTEE

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re:
14 SAND HILL CAPITAL PARTNERS III,
LLC, a California limited liability company,
15 Debtor.

Chapter 7

No. 08-30989 TC

17 JANINA M. ELDER, Trustee of the
18 Bankruptcy Estate of Sand Hill Capital
Partners III, LLC, a California limited
19 liability company, Debtor,

20 Plaintiff,

21 vs.

22 GARY THORNHILL, an individual,
23 Defendant.

Adv. Pro. No. 09-03109 TC

TRUSTEE'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
APPLICATION FOR ORDER OF
EXAMINATION AND WRITTEN
DISCOVERY PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 69

24 The Court should permit Janina M. Elder, Trustee of the bankruptcy estate of Sand Hill
25 Capital Partners III, LLC ("Trustee") to conduct post-judgment discovery of judgment debtor
26 Gary Thornhill pursuant to Federal Rule of Civil Procedure 69 and the California Code of Civil
27 Procedure.

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A. Factual Background

Trustee is the acting Trustee of the bankruptcy estate of Sand Hill Capital Partners III, LLC, Debtor. See *Declaration of Jeremy A. Burns in Support of Application for Order of Examination and Written Discovery Pursuant to Rule 69, ¶ 2*. On February 10, 2010, a judgment in the amount of \$700,000 was entered in favor of Trustee, and against Defendant Gary Thornhill ("Thornhill"). *Id.*, ¶ 3, Exhibit 1. Dkt No 69. The judgment against Thornhill has not been satisfied. *Id.*, ¶ 4.

B. Argument

The Court may issue an Order of Examination and require Thornhill to respond to written discovery.

The procedure on execution of a federal judgment is to use the procedure of the state where the federal court is located. Furthermore, the judgment creditor may obtain "discovery from any person--including the judgment debtor--as provided in these rules or by the procedure of the state where the court is located." Fed.R.Civ.P. 69 (a)(1).

Here, Thornhill is a judgment debtor. The Trustee has the right to propound discovery under California law. Therefore, the Trustee is entitled to propound written document requests and interrogatories and to conduct a debtor's examination before the Court.

In turn, the California Code of Civil Procedure provides that any time a money judgment is enforceable, a judgment creditor may apply to a court for an order of examination. California Code of Civil Procedure section 708.010. A judgment creditor may apply for an order requiring the judgment debtor to appear before the court to furnish information to aid in the enforcement of the money judgment. *Id.* §708.110(a). In addition, the Judgment Debtor may be required to respond to written interrogatories and requests for production of documents. *Id.*, §§708.020-030.

C. Conclusion

The Court should order Mr. Thornhill to produce documents, answer the written interrogatories, and appear to testify.

1 Dated: April 19, 2010

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By: _____



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Jeremy A. Burns

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Attorneys for Judgment Creditor
JANINA M. ELDER, TRUSTEE

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MPA ISO APP. FOR OEX & WRITTEN

DISCOVERY